

BEFORE THE UNITED STATES TRADE REPRESENTATIVE

**TESTIMONY OF CELESTE DRAKE, TRADE POLICY SPECIALIST
ON BEHALF OF THE AFL-CIO
IN SUPPORT OF THE PETITION TO REMOVE**

GEORGIA

**FROM THE LIST OF ELIGIBLE BENEFICIARY DEVELOPING COUNTRIES
PURSUANT TO 19 U.S.C. § 2462(d) OF THE
GENERALIZED SYSTEM OF PREFERENCES (GSP)**

filed by

**THE AMERICAN FEDERATION OF LABOR &
CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)**

JANUARY 10, 2012

I. Introduction

I first want to thank the Trade Policy Staff Committee for accepting for review our petition with regard to Georgia's failure to afford internationally recognized workers' rights, as is required pursuant to Section 19 USC § 2462(d) of the Generalized System of Preferences (GSP). I also thank you for the opportunity to testify today.

Following the "Rose Revolution" of 2003, the Georgian government made a concerted effort to establish a more representative and accountable government. At the same time, the Georgian Trade Union Amalgamation, the only trade union federation in Georgia, also underwent dramatic changes. A new, young cadre of trade union activists was elected to the leadership of both the newly renamed Georgian Trade Union Confederation (GTUC), as well as its single largest union, the Educators and Scientists Free Trade Union of Georgia (ESFTUG).

However, without consulting the trade unions, the Government of Georgia (GOG) quickly passed a new and draconian anti-union, anti-worker labor code. Not only is it enforcing this anti-worker code with apparent enthusiasm, it is interfering in internal trade union elections and refusing to comply with valid dues collections agreements.

II. Georgian Labor Law Does Not Afford Workers Internationally Recognized Worker Rights

We have seen no meaningful improvements to Georgian labor law since the original petition. In fact, the situation has become worse. By a vote of Parliament on December 17, 2010, the Labor Code became part of "Organic Law," which makes it even more difficult to amend.

The law continues to abrogate internationally recognized worker rights. For example:

- Article 4 of the Organic Law of Georgia on the Suspension and Prohibition of the Activities of Voluntary Associations provides that a court can suspend the activity of a trade union if it, among other things, "stirs up social conflict." This provision could be misapplied to suspend legitimate trade union activity.
- Georgian law fails to adequately protect workers from anti-union discrimination in hiring and firing.
- Articles 41-43 of the Labor Code appear to put collective agreements on equal footing with individual agreements and allow an employer to negotiate individual agreements when a collective agreement already exists.
- The right to strike is limited and governed by byzantine requirements, such as a set limit of 90 days per strike and the requirement of a token pre-strike before the actual strike.¹

¹ These examples are in no way meant to be exhaustive; they are merely illustrative.

III. Violations of Worker Rights in Practice

Unfortunately, Georgian workers report that the Georgian government continues to attempt to interfere with internal union elections and to refuse to cooperate in dues deduction despite valid agreements to do so at multiple unions.

Educators and Scientists Free Trade Union of Georgia (ESFTUG)

The government continues to refuse to cooperate in dues deduction for the ESFTUG nationwide, despite a valid agreement providing for check-off that the Ministry of Education and Science (MOES) signed in 1998 with ESFTUG's predecessor union.²

Despite reported threats by the MOES regarding what would happen if the official government candidate did not win the ESFTUG election, the independent candidate, Maia Kobakhidze, won.³ ⁴ The losing candidate challenged the quorum in the election in court. Instead of making a ruling, on June 24, 2011 the trial judge issued a decision referring the case to the Administrative Court—totally improper since that court only deals with government agencies, not with private organizations like unions. This decision has caused another lengthy delay during which the union remains cut off from its own finance collection. The Minister of Education has reportedly used the ongoing court case as an excuse not to hold “social dialogue” meetings with the union, saying it would be unfair since the leadership issue is in dispute. Presumably, such meetings would be the first step in moving the Minister towards settlement of the dues issue.

When the union began plans to collect dues by hand, the GOG announced that any request for money in a school building was illegal and could result in arrest. In November 2011, the ESFTUG began a new, experimental system of membership dues collection, where individual members would pay their monthly dues directly to the trade union account. This system only exists in four of seventy-two counties in Georgia. In other counties where the ESFTUG has tried to begin this process, the MOES, through its regional offices (called “Resource Centers”) has communicated to school principals that no dues collections of any kind are to be tolerated and teachers have been told by school principals that their jobs are at risk if they participate.

The AFL-CIO has learned of three reported cases of interference by the Resource Centers, in which the heads of the Resource Centers in each of three counties interfered in the ESFTUG's attempts to have individual members pay dues directly through their bank to the trade union account.

² In the county of Tkibuli, the ESFTUG was still able to collect dues via the check-off system in a few schools, but this was suspended at the beginning of the school year.

³ The AFL-CIO understands that the MOES tried to suggest to the ESFTUG County Organization leaders that if the MOES' candidate were “elected” to the presidency of the ESFTUG, the check-off system would be restarted. Of course, by doing this, the MOES implied that it indeed had been the organization that had stopped the check-off system, in the first place.

⁴ During the election, Kobakhidze reportedly received a call on her home phone from a person who said he was “a close associate of the Minister of Education.” The caller threatened her with death if she did not step aside in favor of the government-supported candidate. She reported this threat to the US Embassy.

Where it exists, the new system is working up to a point, but the ESFTUG is losing anywhere from 35-50% of each member's dues paid, as the banks charge a flat rate of 1 Georgian lari for such transactions and the average wage of a Georgian teacher is around 250 Georgian laris, which means that the membership dues would be 2.5 Georgian laris per member. So, although there has been some new collection of dues in this new manner, the union is getting far less income per member than through the check-off system.

The government has pressured Kobakhidze to resign and change the union's constitution, but she refused.

Railway Workers Trade Union of Georgia (RWU)

The GOG continues its refusal to cooperate in dues check-off for this union, despite a valid collective bargaining agreement providing for check-off. The GTUC filed and won a court decision on November 15, 2011 reinstating the union's right to dues check-off, but government-controlled delegates have appealed the decision. In the meantime, the union is collecting negligible dues. Meanwhile, the government attempted to run its own handpicked candidate for president of the union, but its candidate lost to Hamlet Lomidze. The government-supported candidate challenged the results of the election, claiming a quorum was not present at the union's congress. However, during the week of November 7, following the weight of the evidence that Lomidze and the union presented, the trial judge found that the congress was legally constituted. The union's leaders report that the government's handpicked candidates could appeal that decision and force the union to continue in the court process.

It is worth noting that all of the employers in the cases described so far are state-organizations and agencies. While the GOG created the Tripartite Commission and devoted one session to this matter, the government-owned Georgian State Railways System failed to follow through on the recommendation that it resume social dialogue with the trade union. The union has sent numerous written requests to the Georgian State Railway System management, asking to engage in social dialogue and has not once even received a reply.

The management has continued to disregard the Tripartite Commission recommendation. As such, the AFL-CIO does not believe that that GOG is serious about improving its worker rights record.

On the contrary, these cases demonstrate that the Government of Georgia is working actively to abrogate collective bargaining agreements and prevent government employees from effectively exercising their rights to freely associate, organize, and bargain collectively.

Eurasian Steel-Herkules Plant, Kutaisi

In September, workers struck the Herkules plant over three main concerns. First, workers received only half their pay for May 2011. Second, workers are generally unable to calculate whether their pay for a particular month is correct because the company refuses to clearly publish either applicable rates of pay or any explanation of various deductions from pay.

Finally, the workers have grave concerns about the dangerous conditions that prevail at the plant and management's apparent disregard for safety practices.

The strike ended after massive police intervention on September 15, involving the governor and approximately 50 police vehicles. The police pressure included attempts to damage a striker's car by pouring dirt in the gas tank. Before rehiring any striking workers, plant managers asked workers if they planned to continue union activities. Most striking workers, afraid they would not be rehired and already forced by police to sign papers saying they would not be involved with the union, said no. A few either refused to answer or told management they would continue. After widespread reporting on the strike and international pressure, the company took back all the strikers except for the three main leaders who had been jailed, Irakli Iobidze, Emiliane Gumberidze, and Malkhaz Gogiava.

One of the few rehired workers who told management he intended to continue union activity reported that for 30 days after reinstatement, a police officer came to his home at the beginning of every shift he was scheduled to work and if he was late, knocked on the door and drove him to the plant. This harassment, combined with the jailing of the strike leaders and use of police pressure to force strikers back to work, demonstrates that the police continue to support the factory management's efforts to break the union. In interviews with six different workers, each said they want to continue building a union at the plant, but fear they may be punished by management or the police.

Three trade union leaders who led the strike remain "dismissed"—Irakli Iobidze, Emiliane Gumberidze, and Maklhaz Gogiava. After waiting for almost a month for the reinstatement, the three submitted written statements to the administration of the company requesting that the company either rehire them or provide formal documents of dismissal so that they could challenge their dismissals in court. At last report, only one, Iobidze, had received adequate documentation to challenge his apparent dismissal in court; he and the GTUC plan to pursue a case. The other two have not been allowed into the factory or received any pay in four months although they have been told they were not "fired." They report that they remain under intensive police surveillance and that the local police have summoned them several times to provide "new evidence."

The government contends that the plant managers responded to worker demands and made improvements. However, the workers report that this is not the case. In response to a request for uniforms, the company provided incomplete (some sets were missing gloves, some sets were missing boots) and ill-fitting uniforms. The workers had also requested a lunchroom providing free meals. Although management set up a lunchroom and promised the meals would be free, it started charging for meals soon after the canteen opened and has already raised the price at least once.

However, management has so far largely ignored the three main issues (May monthly pay, pay transparency, and safety) that precipitated the strike. Management promised that the missing half-month's wages would be paid after the strike. While most workers have not received the promised back pay, a few workers received partial back pay for May, but nowhere near what they believe they were owed. Of course, because the workers receive no accounting for the

number of overtime hours worked, the rates paid for those hours, or explanations for amounts withheld in each paycheck, it is difficult to know for sure. Despite a change in personnel, the new bookkeeper continues the policy of refusing to answer questions or provide details, so workers have no way to determine whether their pay (either new pay or back pay) is correct.

The Metallurgy, Mining and Chemical Industry Workers Trade Union filed a complaint with the Prosecutor's Office against the head of plant security (Revaz Diakonidze) because of discrimination against trade union leaders and members. Unfortunately, many (but not all) of the workers who provided the union with formal written statements on Diakonidze's illegal acts, have changed their testimony. The union reports the changed testimony occurred due to pressure and threats by the police.

The GTUC and its affiliate the Metallurgy, Mining and Chemical Workers' Trade Union continue efforts to restart the process of social dialogue with the company management, but so far, all efforts have been in vain. The workers are afraid to reveal their ties with the union and therefore the union activities are impossible to carry out.

Regarding the treatment of the Indian workers at the plant, Georgian workers confirmed that the Indian workers' living quarters in the plant continue to be cramped and appalling, even by the simple standards of a Georgian regional city. Seventy beds are lined up in one small space. The Georgian workers report that before the strike, management confiscated the passports of the foreign workers so they had no official identification if they left the plant.

Public Servants Trade Union of Georgia

When workers began responding to the union's campaign to demand collective bargaining, the government applied severe pressure on union members to resign from the union and stop paying dues. This happened in two large regions covering 22 of 72 counties in Georgia. These regions were targeted because they were the two regions where the union was strongest and making the greatest progress toward collective agreements.

In some locations, dues check-off was summarily ended, but in other locations, dues were cut off only for those workers who signed resignation and dues retraction letters. The union lost 2,400 members in a 4-day period in August 2011. All the resignation letters were worded exactly the same, so it was clear the mass resignations were the result of a coordinated effort. A few members reported to the union that they were brought into large captive audience meetings run by county managers and pressured to sign the union resignation letters. Some of the managers indicated they were ordered to take these actions by the central government. The union speculated that the actions were limited to the two most important regions rather than a nationwide attack because the government's attacks on the teachers and railway unions received significant international attention.

The union has begun a program of talking to workers about the government's attacks on the union, but many workers are afraid to talk with union representatives because they could be fired. The union president, Nugzar Tchintcharauli, reported that the result of the attacks has been not only the loss of union finances, but the fear instilled in members to participate in union

activities. In some cases, dues are still collected in the two regions from the workers who refused to sign the resignations, but these are mostly union officers.

Health Care Workers Union

Similar to the Public Servants Trade Union, members of the Health Care Workers Union were pressured by managers in 12 counties to resign from the union and retract dues authorization. Since August, the union has lost a majority of its dues income. In some locations, dues check-off was unilaterally ended, but unlike the railway and education unions, this was not nationwide. Some local facility managers said Secret Service officers were involved in telling managers to pressure workers to quit the union. On November 11, 2011, the president of the union, Joni Janashia, was contacted by an intermediary saying the Ministry of Health wanted him to resign and clear the way for a government-supported candidate to take over the union. The message also stated that if the request were refused, the president would be jailed. The president has refused to resign.

Georgian Trade Union Confederation (GTUC)

In an Executive Council meeting on November 16, 2011, the Finance Secretary of the GTUC reported that as a result of these attacks on five of the largest unions in the confederation, 70% of the GTUC's normal monthly dues collection has been lost. The confederation has laid off one-third of its staff and reduced the working hours of others. Considering the broad and massive attacks suffered by GTUC affiliates, the only reasonable conclusion is that the central government has orchestrated the attack. In the case of Herkules Steel, police were directly involved in breaking the strike and continued their involvement for at least a month afterward. More than 25 different union activists were reportedly detained and later released by police. The railway and teachers' unions both suffered cutoff of dues check-off despite valid collective agreements requiring check-off, and in both unions, government-supported candidates attempted to wrest control in elections, then challenged the results in court when they lost. In the public service and health care unions, workers resigned in mass in targeted locations where managers pressured members to do so, and various sources informed the unions that the campaign was ordered by the central government. The presidents of the GTUC, education, and health care unions have all received threats to their personal safety or that they could be jailed.

In sum, in numerous instances, the government has refused to protect workers in the exercise of their ILO core labor rights. It has either acted directly to obstruct such rights (as in the case of the Public Servants Trade Union) or cooperated with employers to prevent the free exercise thereof (as in the case of workers at the Herkules plant).

Updates on ILO Cases Relating to Events Described in the AFL-CIO's 2010 Petition

In ILO Case Number 2663 (involving Poti Port and BTM Textiles), filed by the GTUC and the International Trade Union Confederation (ITUC) against the GOG, the Governing Body of the ILO adopted in March 2010 the Committee of Freedom of Association's Report vindicating the GTUC and ITUC's position. The Committee on Freedom of Association recommended that the GOG "in full consultation with the social partners concerned . . . take the necessary measures to

amend the Labour Code so as to ensure specific protection against anti-union discrimination, including anti-union dismissals and provide for sufficiently dissuasive sanctions against such acts.”⁵ Further, the Committee recommended that “should the matter not be satisfactorily and promptly resolved through the tripartite Commission, the Government will carry out an independent investigation into the dismissals of the nine Port trade union leaders and nine textile enterprise union leaders and should the allegations be found true, will take the necessary measures for the reinstatement of the dismissed workers in their posts.”⁶ To date, the GOG has not amended the law as recommended nor provided redress to the fired workers.

Likewise, the GOG has failed to act to address the ILO’s recommendations in Case Number 2678, filed against the Georgian Government by the ESFTUG and Education International, concerning the counties of Senaki, Tbilisi, and Dedoplistskharo.⁷

IV. Conclusion

The government of Georgia is continuing to commit multiple labor law violations. There have been no meaningful improvements to Georgian labor law, and the cases described in the 2010 petition remain largely unresolved.

New issues have arisen in the past year indicating the Georgian government’s continuing failure to respect labor laws, the right to collectively bargain, and the right to freedom of association. In multiple instances, the government has interfered with elections and refused to comply with valid dues check-off agreements. At one plant, police ended a strike, jailed the leaders, and harassed rehired workers. Because of these tactics, union membership has shrunk considerably across the country, especially in more sparsely populated regions where the government can have a large impact without instigating international attention.

For the reasons above, the AFL-CIO urges the President to remove Georgia from the list of beneficiary developing countries under the GSP.

⁵ 356th Report of the Committee on Freedom of Association, Case No. 2663 (Georgia): Report in which the Committee requests to be kept informed of developments, ILO Governing Body, Geneva, March 2010, ¶ 771(a).

⁶ *Id.*, ¶ 771(e).

⁷ 357th Report of the Committee on Freedom of Association, Case No. 2678 (Georgia): Report in which the Committee requests to be kept informed of developments, ILO Governing Body, Geneva, June 2010, ¶ 660.